

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AASIR AZZARMI,
Plaintiff,
-against-
KEY FOOD STORES CO-OPERATIVE
INC., et al,
Defendants.

20-CV-6835 (GBD) (BCM)

ORDER

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DATE FILED: 7/6/21

BARBARA MOSES, United States Magistrate Judge.

On June 1, 2021, with the Court's permission, pro se plaintiff Aasir Azzarmi filed his Amended Complaint. (Dkt. No. 34.) On June 21, 2021, defendants Key Food Stores Cooperative Inc. (Key Food) and Madeline Donohue filed a motion to dismiss the Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6). (Dkt. No. 42.) Plaintiff now moves (1) to "convert" that motion into a motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c) or, in the alternative, (2) for judgment on the pleadings (presumably in favor of plaintiff) pursuant to Rule 12(c). (Dkt. No. 49.) Plaintiff argues that since Key Food answered his original Complaint on January 7, 2021 (Dkt. No. 15), and since Donohue, although not named in the original Complaint, is "just a managing agent" for Key Food, their Rule 12(b)(6) motion is "untimely" and must be converted into a Rule 12(c) motion. (Dkt. No. 49 at ECF page 2.)

Plaintiff's motion is DENIED. Neither Key Food nor Donohue has answered the Amended Complaint. Instead, they filed their Rule 12(b)(6) motion within the deadline set by this Court (*see* Dkt. No. 32), making it both timely and procedurally appropriate.

The Clerk of Court is respectfully directed to close the motion at Dkt. No. 49.

Dated: New York, New York
July 6, 2021

SO ORDERED.



BARBARA MOSES
United States Magistrate Judge